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Peter Rastello

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EXAMINER

CORRIELUS, JEAN B

ART UNIT

PAPER NUMBER

2611

NOTIFICATION DATE

DELIVERY MODE

12/09/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/007,087 | Applicant(s) RASTELLO ET AL. | |
| | Examiner Jean B. Corrielus | Art Unit 2611 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-10, 12-18 and 23 is/are allowed.
- 6) ☒ Claim(s) 2-5, 11, 19-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/18/08 has been entered.

Claim Rejections - 35 USC § 112

2. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 25 recites "said read address generator configured to generate a plurality of available address sequences in parallel and further configured for selecting said read address sequence from among said plurality of available address sequences" however there is no support for such limitation as claimed in the original disclosure.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 2-5, 11, 19-22, and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by applicant's admitted prior art fig. 1.

As per claim 2, Applicant's admitted prior art teaches a modulator fig. 1 comprising a memory 106 for storing interleaved data, the memory having a write address port see fig. 1; a write address generator 102 functionally equivalent to the claimed "inverse interleaving address generator" coupled to the write address port see fig. 1. note that because there is no structural difference between the claimed invention and the prior art of fig. 1, the prior art fig. 1, is believed to be able to provide the read address according to the equation recited following the wherein clause, recited in the claim.

. As per claim 3, note that because there is no structural difference between the claimed invention and the prior art of fig. 1, the prior art fig. 1, is believed to be able to perform the limitations following the wherein clause.

As per claim 5, the modulator is DSSS modulator see background of the invention.

As per claim 4, see claim 2, in addition, note that because there is no structural difference between the claimed invention and the prior art of fig. 1, the prior art fig. 1, is believed to be able to perform the address mapping that takes an original row address and transfer number and provides a new address to the memory according to the equation recited following the wherein clause.

As per claim 11, applicant's admitted prior art teaches a modulator fig. 1 comprising a memory 106 for storing interleaved data, the memory 106 having a write address port and a data input port see fig. 1; a write address generator 102 corresponding to the

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claimed "inverse interleaving address generator" coupled to the write address port; a channel encoder having an input for receiving data see fig. 1 and a puncturing circuit having an input port coupled to the channel encoder output port, the puncturing circuit having an output port coupled to the data input of the memory 106 see fig. 1. Note that because there is no structural difference between the claimed invention and the prior art of fig. 1, the prior art fig. 1, is believed to be able to perform the limitations following the wherein clause.

As per claim 19, see claim 5.

As per claim 20, see claim 4.

As per claim 21, see claim 4.

As per claim 20, see claim 4.

As per claim 24, the admitted prior art teaches a read address generator 104 coupled to the read address port see fig. 1.

As per claim 25, applicant admitted prior art teaches a modulator fig. 1 comprising a memory 106 for storing interleaved data, the memory having a write address port and a read address port see fig. 1; a write address generator 102 coupled to the write address port see fig. 1 and a read address port coupled to the read address port for applying a read address sequence to the read address port note that because there is no structural difference between the claimed invention and the prior art of fig. 1, the prior art fig. 1, is believed to be able to provide a plurality of available addresses and for selecting a read address sequence from among said plurality of capable addresses.

Allowable Subject Matter

5. Claims 6-10, 12-18 and 23 are allowed.

Response to Arguments

6. Applicant's arguments filed 11/18/08 have been fully considered but they are not persuasive. It is alleged that support for "said read address generator configured to generate a plurality of available address sequences in parallel, and further configured for selecting said read address sequence from among said plurality of available address sequences " can be found at lines 10-18 of the specification page 12. However, a review of such section of the specification does not show such a support. Such section of the specification teaches at best "addressing can be generated by simply selecting the appropriate range of the counter and further teaches that the lowest bit of addressing can be selected to correspond to the third bit of the counter.

Examiner's comment

7. The indicated allowability of 2-5, 11, 19-22, and 24-25 is withdrawn because per the MPEP 2114, section of which is reproduced below for ease of convenience, apparatus claim must distinguished from prior art in term of structure rather than function. Since there is no structural difference between the prior art and the claims noted above, the claims are rejected in view of applicant's admitted prior art, as set forth above.

2114 [R-1] Apparatus and Article Claims — Functional Language

For a discussion of case law which provides guidance in interpreting the functional portion of means-plus-function limitations see MPEP § 2181 - § 2186.

APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims< directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device *is*, not what a device *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was “for mixing flowing developer material” and the body of the claim recited “means for mixing ..., said mixing means being stationary and completely submerged in the developer material”. The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean B. Corrielus whose telephone number is 571-272-3020. The examiner can normally be reached on Monday-Thursday from 9:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chieh Fan can be reached on 571-272-3042. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jean B Corrielus/
Primary Examiner
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